

**BOARD OF APPEALS
for
MONTGOMERY COUNTY**

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Case No. A-6600

PETITION OF PAUL BAINES

OPINION OF THE BOARD

(Opinion Adopted January 16, 2019)
(Effective Date of Opinion: January 23, 2019)

Case No. A-6600 is an application for a variance of 22.60 feet from the 53.60 foot front lot line setback (established building line) required by Section 59-4.4.1.A of the Zoning Ordinance. The Petitioner seeks the variance to allow the construction of a new single-family dwelling on the subject property.

The Board of Appeals held a hearing on the application on January 16, 2019. Petitioner Paul Baines, who owns the subject property, appeared at the hearing in support of the variance.

Decision of the Board: Variance **GRANTED**.

EVIDENCE PRESENTED

1. The subject property is Lot 14, Block B, Kensington View Subdivision, located at 11115 West Avenue, Kensington, MD, 20895 in the R-60 Zone. It is 6,932 square feet in size, and as described by the Petitioner, trapezoidal in shape. See Exhibits 3 and 4.
2. Petitioner's Justification Statement ("Statement") sets forth numerous reasons that the subject property is unique for the purpose of granting a variance, describing the property's steep, forested slopes that take up 20% of the property; the property's trapezoidal as opposed to rectilinear shape, which leaves a triangular buildable envelope; the property's shallow depth (85 feet), which is 40% less deep than the average of the properties used to calculate the established building line ("EBL"); and the property's small size, which is "smaller than most other lots on the street," smaller than the average size of the properties used to calculate the EBL.

(8,267 square feet), and almost 2,000 square feet smaller than the property next door (8,846 square feet). In addition, the Statement notes the following:

The property is zoned for residential use and no other uses are reasonable given its proximity to other residential properties and its current taxable value. If the EBL is to be adhered to, it would make the buildable area a shallow, and wide triangle, the deepest point of which is less than 8ft. This would result in no reasonable use of the property.

See Exhibit 3. The shallow and unusable nature of the triangular buildable envelope that results from the application of the setbacks required by the Zoning Ordinance to this property is clearly shown on Exhibit 4.

3. The Petitioner notes in his Statement that he is not responsible for the special circumstances or conditions pertaining to this property, noting that he “has taken no action on the land other than having it surveyed.” See Exhibit 3.
4. The Statement at Exhibit 3 further states that “[t]he siting, size and design of the proposed house was executed so as to require the minimum amount of relief from the code,” noting that:

The house has been placed in what the applicant believes to be the most appropriate location, sited as far back as the rear setback will allow. Also, the house is as shallow as a house can be while still being efficient with standard material sizes and room layouts. The house is 24ft deep by 32ft wide, 768sf footprint. With two floors that makes 1,536sf, a small house by any standards. To put these numbers in context, over the last 42 years, the average new US house has increased in size by more than 1,000 square feet, from an average size of 1,660sf in 1973 (earliest year available from the Census Bureau) to 2,687sf in 2015. The past four houses the applicant has designed have been under 2,000 sf, which shows his commitment to smaller, more sustainable living, even when land restrictions are not present.

5. The Petitioner notes in his Statement that the standard front lot line setback in the R-60 Zone is 25 feet, and that he is proposing to locate this home 31 feet back from that lot line. He further indicates that the houses on the street “are not a uniform distance from the road,” and that while it could be argued that seeking a variance from the rear lot line “would put it more in line with the other houses,” this “would have other implications, most importantly, it would ruin the view of the forest for the next door house, lot 13. By staggering the house, it not only preserves the character of the street, but also preserves views.” See Exhibit 3.
6. The Statement notes that the proposed development is “in conformity with the ideas and patterns put forth in the 2018 update to the general plan,” and that “[t]here is no impact to the master plan as the proposed development is on a

previously subdivided lot and does not impact the density of the community in that the relative small size of the house keeps the lot coverage well under the maximum, and in proportion with surrounding lots." See Exhibit 3.

7. At the hearing, the Petitioner testified the subject property was recorded in 1925, and that it has steep slopes and protected roadside trees. He testified that the property is less deep than others on the street, and smaller than the others used for the EBL survey. The Petitioner testified that the property is trapezoidal in shape, and that in addition to bordering West Street, it is bordered by an unimproved right-of-way (Upton Drive), from which a 15-foot setback is required.

The Petitioner testified that the standard front lot line setback in the R-60 Zone is 25 feet, and that he is proposing to locate this house 31 feet back from the front lot line along West Avenue, farther than the 25-foot standard setback but not as far as the 53.6 foot EBL. He testified that the established building line setback along West Avenue for this house is skewed by one house which is set back over 84 feet. He noted that while the proposed house would sit approximately ten (10) feet closer to the road than its abutting neighbor, that if you took the porch on the neighboring house into account, the difference was less than five (5) feet.

The Petitioner testified that the application of the established building line setback along West Avenue instead of the standard 25-foot setback leaves the subject property with a buildable envelope that is only 7.3 feet deep, as shown on Exhibit 4. He testified that there was a house approved for this property in 1997 in approximately the same location he is proposing, but that it was never built. He testified that the plans for the previously-approved house indicated that there was no EBL because the property was recorded before 1928.

CONCLUSIONS OF LAW

Based on the Petitioner's binding testimony and the evidence of record, the Board finds that the variance can be granted. The requested variance complies with the applicable standards and requirements set forth in Section 59-7.3.2.E, "Necessary Findings," as follows:

1. Section 59-7.3.2.E.1 of the Montgomery County Zoning Ordinance provides that a variance can be granted if "denying the variance would result in no reasonable use of the property." The Board finds, pursuant to the Statement submitted by the Petitioner and his binding testimony, and as shown on Exhibit 4, that the application of the 53.6 foot EBL along West Avenue to the subject property, in combination with the other required setbacks, results in an unusually shaped (triangular) and shallow buildable envelope, less than eight (8) feet deep at its deepest point, and precludes construction of a home on this 6,932 square foot, residentially-zoned property, leaving the Petitioner with no reasonable use of the property. The Board further finds that the 22.60 foot variance requested by the Petitioner, which would allow him to site a house within 31.00 feet of the front lot line

along West Avenue, is necessary to allow reasonable use of this property. Thus the Board finds that the requested variance can be granted pursuant to Section 59-7.3.1.E.1 of the Zoning Ordinance.

2. Alternatively, based on the evidence of record, the Board finds that the variance can be granted under Section 59-7.3.2.E.2 of the Zoning Ordinance, since the request also complies with the applicable standards and requirements set forth in that Section, as follows:

Section 59-7.3.2.E.2.a - one or more of the following unusual or extraordinary situations or conditions exist:

Section 59-7.3.2.E.2.a.i exceptional narrowness, shallowness, shape, topographical conditions, or other extraordinary conditions peculiar to a specific property;

The Board finds that due to the shape and shallowness of the subject property, the application of the established building line setback to this property along West Avenue, in combination with the other setbacks required by the Zoning Ordinance, results in an unusually shaped and extremely constrained buildable envelope, such that a home could not be constructed on the subject property without variance relief. The Board finds that this is an exceptional condition peculiar to this property. See Exhibits 3 and 4.

2. *Section 59-7.3.2.E.2.b. the special circumstances or conditions are not the result of actions by the applicant;*

The Board finds that neither the shape and shallow nature of this property, which was recorded in 1925, nor the setbacks of the other houses on West Avenue which create the established building line, resulting in turn in the property's unusually constrained buildable envelope, are not the result of actions by the Petitioner.

3. *Section 59-7.3.2.E.2.c. the requested variance is the minimum necessary to overcome the practical difficulties that full compliance with this Chapter would impose due to the unusual or extraordinary situations or conditions on the property;*

The Board finds, based on the testimony of the Petitioner and the Statement in the record at Exhibit 3, that the requested variance is the minimum necessary to allow the proposed development of this property, which the Board notes is deliberately modest in scale (only 24 feet deep), and thus is the minimum necessary to overcome the difficulties that full compliance with the Zoning Ordinance would impose. The Board observes that with the grant of the requested variance, the proposed construction will still be sited 31 feet from the front lot line, farther than is required for existing homes in the R-60 Zone.

4. *Section 59-7.3.2.E.2.d. the variance can be granted without substantial impairment to the intent and integrity of the general plan and the applicable master plan; and*

The Board finds that the proposed construction will permit residential use of this property, and can be granted without substantial impairment to the intent and integrity of the general plan and the Kensington-Wheaton Master Plan, as indicated on Exhibit 3.

5. Section 59-7.3.2.E.2.e. granting the variance will not be adverse to the use and enjoyment of abutting or confronting properties.


The Board finds that the grant of this variance will allow the residential use of this property anticipated by its original subdivision, and thus will not be adverse to the use and enjoyment of abutting or confronting properties. The Board notes that even with the grant of this variance, the proposed construction will still be setback 31 feet from West Avenue, more than the standard 25-foot setback in the R-60 Zone, and that the Petitioner endeavored, by seeking a variance from the EBL rather than from the rear setback, to preserve views from the neighboring house to the extent possible.

Accordingly, the requested variance is **granted**, subject to the following conditions:

1. Petitioner shall be bound by the testimony and exhibits of record; and
2. Construction shall be in accordance with Exhibits 5(a)-(d).

Therefore, based upon the foregoing, on a motion by Katherine Freeman, seconded by Stanley B. Boyd, Vice Chair, with John H. Pentecost, Chair, and Bruce Goldensohn in agreement, the Board adopted the following Resolution:

BE IT RESOLVED by the Board of Appeals for Montgomery County, Maryland that the opinion stated above is adopted as the Resolution required by law as its decision on the above-entitled petition.



John H. Pentecost, Chair
Montgomery County Board of Appeals

Entered in the Opinion Book
of the Board of Appeals for
Montgomery County, Maryland
this 23rd day of January, 2019.



Barbara Jay
Executive Director

NOTE:

Any request for rehearing or reconsideration must be filed within fifteen (15) days after the date the Opinion is mailed and entered in the Opinion Book. Please see the Board's Rules of Procedure for specific instructions for requesting reconsideration.

Any decision by the County Board of Appeals may, within thirty (30) days after the decision is rendered, be appealed by any person aggrieved by the decision of the Board and a party to the proceeding before it, to the Circuit Court for Montgomery County, in accordance with the Maryland Rules of Procedure. It is each party's responsibility to participate in the Circuit Court action to protect their respective interests. In short, as a party you have a right to protect your interests in this matter by participating in the Circuit Court proceedings, and this right is unaffected by any participation by the County.

See Section 59-7.3.2.G.1 of the Zoning Ordinance regarding the twelve (12) month period within which the variance granted by the Board must be exercised.